

§ 1601.16 Access to and production of evidence; testimony of witnesses; procedure and authority.

(a) To effectuate the purposes of title VII and the ADA, any member of the Commission shall have the authority to sign and issue a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purposes of examination and the right to copy.

Any District Director, the Program Director, Office of Program Operations or upon delegation, the Director of Systemic Programs, Office of Program Operations or the Directors, Field Management Programs, Office of Program Operations, or any representatives designated by the Commission, may sign and issue a subpoena on behalf of the Commission. The subpoena shall state the name and address of its issuer, identify the person or evidence subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested. A subpoena shall be returnable to a duly authorized investigator or other representative of the Commission. Neither the person claiming to be aggrieved, the person filing a charge on behalf of such person nor the respondent shall have the right to demand that a subpoena be issued.

(b)(1) Any person served with a subpoena who intends not to comply shall petition the issuing Director or petition the General Counsel, if the subpoena is issued by a Commissioner, to seek its revocation or modification. Petitions must be mailed to the Director or General Counsel, as appropriate, within five days (excluding Saturdays, Sundays and Federal legal holidays) after service of the subpoena. Petitions to the General Counsel shall be mailed to 1801 L Street, NW., Washington DC 20507. A copy of the petition shall also be served upon the issuing official.

(2) The petition shall separately identify each portion of the subpoena with

which the petitioner does not intend to comply and shall state, with respect to each such portion, the basis for non-compliance with the subpoena. A copy of the subpoena shall be attached to the petition and shall be designated "Attachment A." Within eight calendar days after receipt or as soon as practicable, the General Counsel or Director, as appropriate, shall either grant the petition to revoke or modify in its entirety or make a proposed determination on the petition, stating reasons, and submit the petition and proposed determination to the Commission for its review and final determination. A Commissioner who has issued a subpoena shall abstain from reviewing a petition concerning that subpoena. The Commission shall serve a copy of the final determination on the petitioner.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the procedures of section 11(2) of the National Labor Relations Act, as amended, 29 U.S.C. 161(2), to compel enforcement of the subpoena.

(d) If a person who is served with a subpoena does not comply with the subpoena and does not petition for its revocation or modification pursuant to paragraph (b) of this section, the General Council or his or her designee may institute proceedings to enforce the subpoena in accordance with the provisions of paragraph (c) of this section. Likewise, if a person who is served with a subpoena petitions for revocation or modification of the subpoena pursuant to paragraph (b), and the Commission issues a final determination upholding all or part of the subpoena, and the person does not comply with the subpoena, the General Council or his or her designee may institute proceedings to enforce the subpoena in accordance with paragraph (c) of this section.

(e) Witnesses who are subpoenaed pursuant to § 1601.16(a) shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

[43 FR 30798, July 18, 1978, as amended at 47 FR 46275, Oct. 18, 1982; 51 FR 29098, Aug. 14, 1986; 54 FR 32061, Aug. 4, 1989; 55 FR 14245, Apr. 17, 1990; 56 FR 9624, Mar. 7, 1991]